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RECENT DECISIONS

ACTIONS—VOID AND VOIDABLE CONTRACTS—RETURN OF CONSIDERATION AS CONDITION PRECEDENT TO ACTION.—Plaintiff, a passenger, was injured in a railroad accident. An agent of the defendant carrier advanced money to the plaintiff ostensibly for the purpose of enabling her to complete her journey, and obtained her signature to a paper which she did not read and which the agent led her to believe was only a receipt for the money advanced, but which was in fact a release of all claims for damages. *Held*, the plaintiff need not return the money advanced as a condition precedent to recovery. *Bisnett v. Portland Ry. Light & Power Co.* (Ore.), 143 Pac. 991.

It is a general rule that where a person disaffirms a voidable contract he must return the consideration received because the right of action is based upon the subject matter of the contract made and to retain such would be inconsistent with disaffirmance. The principle involved is that one can not ratify or disaffirm a voidable contract in part, accepting the benefits without the burdens. *Indianapolis Abattoir Co. v. Bailey* (Ind.), 102 N. E. 970; *Putnam v. Boyer*, 173 Mo. App. 394, 158 S. W. 861. Even here some cases hold that a return is not necessary as a condition precedent to a right of action where the defendant is guilty of fraud and the plaintiff is unable to return the consideration. *Rase v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 118 Minn. 437, 137 N. W. 176. See *West v. Seaboard Air Line Ry.*, 151 N. C. 231, 65 S. E. 979. But in the principal case the contract under which the money was received was based on the carrier's duty to see its passengers to their destination, and not the release, as that was void for fraud in the factum. Since then the defendant neither affirms nor seeks a cancellation of the contract under which the money was paid, but sues upon the right of action arising by reason of the injuries sustained, he will not be compelled to refund as a condition precedent to bringing his action. *Miller v. Spokane International Ry. Co.* (Wash.), 143 Pac. 981; *Malkmus v. St. Louis Portland Cement Co.*, 150 Mo. App. 446, 131 S. W. 148; *Bliss v. Railroad Co.*, 160 Mass. 447, 36 N. E. 65. Void contracts are sometimes confused with voidable contracts in the application of the doctrine. See *Birmingham Ry., Light & Power Co. v. Jordan*, 170 Ala. 530, 54 South. 280; *Mahr v. Union Pacific Ry. Co.* (C. C. A.), 170 Fed. 699. Where a release is obtained by fraud in the inducement upon a claim in which the amount paid is due at any event upon a liquidated debt, as in the case of money paid in settlement of an insurance policy, no return is necessary but the amount is credited on the judgment. *Crowder v. Continental Casualty Co.*, 115 Mo. App. 535, 91 S. W. 1016.

BANKRUPTCY—TITLE OF TRUSTEE—WIDOW'S RIGHT TO DOWER AND ALLOWANCE IN THE BANKRUPT'S PROPERTY.—The law of Georgia provides that "upon the death of any person leaving an estate" his widow and chil-

dren shall be entitled to "a sufficiency from the estate" for their support for a year. The decedent had been adjudged bankrupt before his death and his estate has passed into the hands of the trustee. *Held*, the widow of the decedent is entitled to support from the estate for a year. *Hull v. Dicks*, 35 Sup. Ct. 152.

By this decision the Supreme Court has settled a much disputed question. Under § 70 (a) of the Bankruptcy Act the trustee is vested with the title of the bankrupt as of the date he was adjudged a bankrupt. And § 8 of the Act saves to the widow and children, all rights of dower and allowance fixed by the law of the State of the bankrupt's residence. Where the right asserted by the widow is to dower in the common law sense, it is clear that her claim is sound, *Porter v. Layear*, 109 U. S. 85; for dower in this respect, is a right in all real property of which the husband was seised of an estate of inheritance at any time during the coverture. 2 BLACKSTONE, COMM., 131; MINOR, REAL PROPERTY, § 260.

But where the wife claims allowance in the husband's personality, or statutory dower in property which he owned at his death the case is not so clear. In the case of *Re McKenzie*, 142 Fed. 383, 15 Am. B. Rep. 679, a State statute provided for the widow's allowance out of personal property of which the husband died "seised and possessed." The husband was adjudged bankrupt and later died. His widow was denied allowance out of his personality on the ground that the title to the husband's property had vested in the trustee and the husband did not die seised and possessed of any of it. But where a similar case arose in a State whose law granted the widow allowance out of property of which the husband died "seised in his own right," it was held that the trustee's title was for the purpose of sale and distribution only, and being of a particular and not of a general character it would not bar the wife's statutory allowance. *Re Slack*, 111 Fed. 523, 7 Am. B. Rep. 121. This is the view taken by the instant case.

An attempt was made in the lower court to distinguish the *Dicks* case from *Re McKenzie, supra*, on the ground that the statute governing the latter case employs words of more rigid and long-ascertained import. *Re Dicks*, 198 Fed. 293.

It has been suggested, that as the widow would get her allowance in any event where the husband dies before adjudication, Congress must have intended § 8 to apply where the husband dies after adjudication, for otherwise § 8 would be of no effect. See dissenting opinion of Adams, J., *Re McKenzie, supra*.

Section 8 is not unconstitutional for lack of uniformity. *Thomas v. Woods*, 173 Fed. 585, 23 Am. B. Rep. 132.

COMMON CARRIERS—CONTRACTS AGAINST NEGLIGENCE.—In an agreement between a railroad company and a landowner under which the former was to construct a spur track upon the latter's property situated outside of the railroad's right of way, the company was released from liability to the landowner for any damage to his property resulting from fires caused by the railroad's engines. *Held*, the contract is invalid in so far as the exemption relates to operations on the main track. *Car-*